

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

POI SEARCH SOLUTIONS, LLC

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*Plaintiff,*

Civil Action No. 2:15-cv-143

V.

FATHOM REALTY, LLC

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*Defendant.*

**FATHOM REALTY, LLC'S ORIGINAL ANSWER TO PLAINTIFF'S ORIGINAL  
COMPLAINT, AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS**

**TO THE HONORABLE JUDGE OF SAID COURT:**

Pursuant to Federal Rule of Civil Procedure 12, Defendant Fathom Realty, LLC (“Fathom”) hereby answers POI Search Solutions, LLC’s (“POI”) Original Complaint (Doc. 1), asserts its affirmative defenses, and brings counterclaims against POI as set forth below.

## I. GENERAL DENIAL

Fathom denies each and every, all and singular, material allegations, matters, or things contained in POI's Complaint for Patent Infringement, that are not expressly admitted, qualified, or answered herein, and demands strict proof of such allegations as required by law.

## **II. ANSWER**

## A. The Parties

1. Fathom is without sufficient knowledge or information to form a belief as the truth or falsity of the allegations set forth in Paragraph 1<sup>1</sup> and therefore denies the same.

<sup>1</sup> All references to “Paragraph X” contained with Fathom’s Answer shall be referring to paragraphs of that same number within Plaintiff’s Original Complaint for Patent Infringement.

2. Fathom admits Paragraph 2.

### **B. Background**

3. Fathom admits that it owns the domain <http://www.fathomrealty.com> and that this domain is available to the public. Fathom denies all remaining allegations in Paragraph 3.

4. Fathom admits that U.S. Patent No. 8,510,045 (the “‘045 Patent,”) entitled “Digital Maps Displaying Search-Resulting Points-Of-Interest In User Delimited Regions,” on its face indicates that it was dated August 13, 2013. Fathom admits that what appears to be the ‘045 Patent on its face is attached as Exhibit A to POI’s Original Complaint. Fathom denies that the ‘045 Patent was duly and legally issued, as alleged in Paragraph 4. Fathom lacks sufficient knowledge or information to admit or deny that a continuation of the ‘045 Patent is currently pending before the USPTO.

### **C. Jurisdiction and Venue**

5. Without admitting infringement, Fathom admits that the Court has subject matter jurisdiction over these claims pursuant to 28 U.S.C. §§ 1331 and 1338(a), as alleged in Paragraph 5. Fathom admits that it resides in the Eastern District of Texas, but denies that it has in the past, or continues to commit, acts of infringement in the Eastern District of Texas, in the State of Texas, or anywhere else in the world.

6. Fathom admits that it transacts business within the State of Texas, as alleged in Paragraph 6 and has offices in the Eastern District of Texas, but specifically denies that it has committed and/or induced acts of patent infringement in this district. Fathom denies any and all remaining allegations or legal conclusions contained in Paragraph 6 and specifically denies any wrongdoing or infringement in the Eastern District of Texas or elsewhere. Fathom denies committing the tort

of patent infringement and/or inducing patent infringement within the State of Texas, this district, or anywhere else in the world.

#### **D. Infringement of U.S. Patent No. 8,510,045 B2**

7. Fathom is without sufficient knowledge or information to admit or deny whether POI is the owner by assignment of all rights, title, and interest in and to the ‘045 Patent or the pending continuation of the ‘045 Patent, as alleged in Paragraph 7.

8. Fathom denies that it is directly infringing any claims of the ‘045 Patent, in violation of 35 U.S.C. § 271, literally or under the doctrine of equivalents. Fathom denies that it is in violation of 35 U.S.C. §271 by making, offering, and/or using in the United States the computer implemented website [www.fathomrealty.com](http://www.fathomrealty.com), and its related webpages, website, software, and/or servers. Fathom further denies that it makes, uses or offers any methods claimed in the ‘045 Patent, as alleged in Paragraph 8.

9. Fathom admits that it owns the domain [www.fathomrealty.com](http://www.fathomrealty.com). Fathom denies that it created, developed, supports and/or operates [www.fathomrealty.com](http://www.fathomrealty.com), as alleged in Paragraph 9.

10. Fathom denies that it has been and/or is now indirectly infringing any claims of the ‘045 Patent, in violation of 35 U .S.C. § 271(b), and denies that it has been inducing end users to its website. Fathom denies that it intends to encourage end users of the website to infringe on the ‘045 Patent by intentionally and voluntarily providing its websites to persons within the Eastern District of Texas and instructing them to use the infringing functionality. Without admitting infringement, Fathom denies that any of its acts constituted infringement after it became aware of the ‘045 Patent. Fathom denies any remaining allegations asserted in Paragraph 10.

11. Fathom denies that it is liable for contributory infringement any claims of the ‘045 Patent, in violation of 35 U .S.C. § 271(c), and denies that it has been contributing to the

infringement of the ‘045 Patent by end users of its website. Fathom denies all remaining allegations contained in Paragraph 11.

12. Fathom denies that any of its actions have caused any damages to POI, or that any of its actions continue to cause any damages to POI. Fathom denies any remaining allegations contained in Paragraph 12.

13. Fathom denies that the limitation of damages provision of 35 U.S.C. § 287(a) is not applicable to POI.

#### **E. Jury Demand**

14. Fathom admits that POI requested a jury and Fathom joins in that request.

#### **F. Prayer for Relief**

15. Fathom denies that POI is entitled to any of the relief requested in the Complaint and/or the Prayer for Relief contained in the Complaint, and to the extent that any statement therein is deemed factual, it is denied. Fathom further denies that any conduct on its part subjects Fathom to liability for damages under U.S.C. §284, or attorney’s fees under 35 U.S.C. §285, and Fathom denies that POI is entitled to any relief whatsoever.

### **III. AFFIRMATIVE DEFENSES**

16. Without conceding that any of the following defenses necessarily must be pled as an affirmative defense or that any of the following defenses is not already at issue by virtue of the foregoing denials, and without altering the burden of proof, Fathom asserts the following affirmative defenses. Fathom reserves the right to amend and assert additional affirmative defenses as further information is obtained.

### **A. Non-Infringement**

17. Fathom has not infringed and does not infringe, either directly, contributory, or by inducement, on any valid and enforceable claim of any of the ‘045 Patent, either literally or under the doctrine of equivalents.

### **B. Invalidity and/or Unenforceability**

18. The claims of the ‘045 Patent are invalid, unenforceable, and/or void for failure to satisfy one or more of the conditions of patentability set forth in Title 35 of the United States Code, including without limitation 35 U.S.C. §§ 101, 102, 103, 112, 116 and 282, because the invention thereof is taught by, suggested by, and/or obvious in view of the prior art, and/or is unsupported by the written description of the patented invention, and/or claims unpatentable subject matter, and no claim of the ‘045 Patent can validly be construed to cover any Fathom product or process. Any past or future search through www.fathomrealty.com uses commonly accepted terms and characteristics, which have been utilized for years before the patent applications at issue and cannot be patentable.

### **C. Laches/Estoppel**

19. POI is estopped and barred under laches from contending that Fathom infringes on the ‘045 Patent.

### **D. Prosecution History Estoppel and Disclaimer**

20. POI’s claims of patent infringement against Fathom are barred in whole or in part by the doctrines of prosecution history estoppel and/or prosecution disclaimer.

### **E. Failure to Give Notice**

21. POI’s claim for damages for alleged infringement prior to giving to its giving proper notice of the ‘045 Patent to Fathom is limited by 35 U.S.C. § 287.

## **F. No Injunctive Relief**

22. POI is not entitled to injunctive relief because any injury to POI is not immediate or irreparable, and, in the event POI ultimately prevails on its disputed claims, POI has an adequate remedy at law.

## **G. Failure to State Sufficient Facts to Constitute a Claim**

23. POI fails to state a claim upon which relief may be granted. This affirmative defense is made in addition to and on top of any similar claim pending in any dispositive motion filed by Fathom. Nothing in a dispositive motion filed by Fathom is a limit on future and alternative failure to state a claim arguments.

## **H. Prosecution Laches**

24. POI's claims of patent infringement against Fathom are barred in whole or in part by the doctrine of prosecution laches.

## **IV. COUNTERCLAIMS**

### **i. Declaratory Judgment, Invalidity, and Unenforceability of the '045 Patent**

25. Fathom hereby incorporates by reference the responses and allegations set forth in Paragraphs 7-24 above.

26. By filing of its Complaint (Doc. 1), POI has purported to assert claims against Fathom for the alleged infringement of the '045 Patent.

27. Fathom denies POI's allegations of infringement.

28. The claims of the '045 Patent are invalid and/or unenforceable for failure to satisfy one or more of the requirements of Title 35 of the United States Code, including without limitation 35 U.S.C. §§ 101, 102, 103, 112, 133, 200 *et seq.*, and 301 *et seq.*

29. The claims of the '045 Patent are unenforceable under the doctrine of prosecution laches.

30. Accordingly, there exists a substantial and continuing justiciable controversy between Fathom and POI as to the infringement, validity, and enforceability of the claims of the ‘045 Patent.

31. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2210, *et seq.*, Fathom is entitled to judgment from this Court finding that the ‘045 Patent is not infringed by any Fathom product, service, or process and that every claim of the ‘045 Patent is invalid and unenforceable.

**ii. Exceptional Case Entitling Fathom to its Attorneys’ Fees and Expenses**

32. Fathom hereby incorporates by reference the responses and allegations set forth in Paragraphs 7-24 above.

33. On information and belief, this is an exceptional case entitling Fathom to an award of attorneys’ fees incurred in connection with defending and prosecuting this action pursuant to 35 U.S.C. § 285, as a result of, *inter alia*, POI’s assertion of the ‘045 Patent against Fathom with the knowledge that Fathom does not infringe any valid or enforceable claim of the ‘045 Patent and/or that the claims of the ‘045 Patent are invalid and/or unenforceable. Further, based on well-established case law, there can be no direct infringement of the ‘045 Patent because it requires input/use from third-parties who are not under Fathom’s control to complete the stated claims. Without any direct infringement, there cannot be indirect infringement. Finally, POI failed to perform an adequate investigation into the facts prior to filing suit.

**V. PRAYER**

WHEREFORE, Fathom respectfully prays for the following relief:

- A. That Plaintiff’s claim be dismissed with prejudice;
- B. That judgment be entered for Fathom;

- C. That this Court declare that the ‘045 Patent, and each and every asserted claim thereof, are invalid, unenforceable, and not infringed;
- D. That Fathom be awarded its reasonable and necessary attorney’s fees and expenses;
- E. That Fathom be awarded its costs of court; and/or
- F. That Fathom be awarded all such other relief that the Court and/or finder of fact deems appropriate.

Dated April 10, 2015.

Respectfully submitted,

**HALLETT & PERRIN, P.C.**

*/s/ Barrett C. Lesher* \_\_\_\_\_

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*Counsel for Fathom Realty, LLC*

**CERTIFICATE OF SERVICE**

Pursuant to Local Rule CV-f(c), the undersigned hereby certifies that all counsel of record are being served with a copy of the foregoing document through the Court's ECF filing service.

*/s/ Barrett C. Lesher* \_\_\_\_\_

Barrett C. Lesher